

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CHIQUITA FRESH NORTH AMERICA LLC

and

WILLIAM MANIS COMPANY

Plaintiffs

V.

Civil No. 08cv2403 (BSJ)(GWG)

JUNIPER TREE, INC., a/t/a BEST PRODUCE

and

YOUNG J. SUH

Defendants

**AFFIDAVIT IN SUPPORT
OF MOTION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT
BE ISSUED AND RELIMINARY
INJUNCTION**

STATE OF: OHIO

COUNTY OF: HAMILTON

Kelly Bates, being duly sworn, deposes and says:

1. I am the credit manager of Chiquita Fresh North America, LLC (“Chiquita Fresh”), and make this Affidavit in support of an application for emergency relief pursuant to Rule 65 of the Federal Rules of Civil Procedure.

2. I am personally familiar with all matters which are the subject of this proceeding and the facts set forth in this affidavit are within my personal knowledge. If called upon as a witness, I would and could competently testify to all facts stated in this affidavit.

3. Chiquita Fresh is a corporation located in Cincinnati, Ohio, which sells wholesale quantities of perishable agricultural commodities (hereafter "produce"). Chiquita

is a produce dealer subject to and licensed under the Perishable Agricultural Commodities Act of 1930, as amended, 7 U.S.C. §499a *et. seq.* (hereafter "PACA").

4. a. Juniper Tree, Inc., a/t/a Best Produce ("Juniper Tree") is a produce dealer as defined by 7 U.S.C. §499a and operates subject to and is licensed under the PACA.

b. Upon information and belief, Young J. Suh was responsible for the day-to-day operations of Juniper Tree during the time in question and was in a position of control over the PACA trust assets belonging to plaintiff.

5. The sales and accounts receivable records of Chiquita including invoices and account statements are made in the ordinary course of business and are made at or near the time of the occurrence of the event of which they are a record. These business records are made by me or under my direction and supervision by employees whose duty it is to prepare such documents.

6. My responsibilities include monitoring the sale of perishable agricultural commodities, including those sales that are the subject of this dispute. My responsibilities also include supervising collection of the accounts receivable for such sales, including Juniper Tree's account which is the subject of the present application. I have custody and control of the sales and accounts receivable records of Chiquita as they relate to Juniper Tree and I am thoroughly familiar with the manner in which those records are compiled.

7. Between June 4, 2007 and August 1, 2007, Chiquita sold and delivered to defendants, in interstate commerce, various wholesale lots of produce worth \$29,601.92 which remains unpaid. (Copies of the outstanding invoices are attached hereto as Exhibit 1.)

8. Defendants accepted the produce received from Chiquita.

9. Chiquita preserved its interest in the PACA trust in the amount of \$29,601.92 by timely delivering invoices to defendants, which contained the language required under Section 5(c)(4) of the Perishable Agricultural Commodities Act ("PACA"), 7 U.S.C. §499e(c)(4). (See Exhibit 1.)

10. Defendants are obligated to hold in trust all produce-related assets received from the sale of produce in order to pay \$29,601.92 to Chiquita.

11. Defendants have never disputed the amount of the debt and have repeatedly promised to pay but have not done so.

12. Specifically for the last three months Young J. Suh, the president of Juniper Tree, has repeatedly told me that Juniper Tree was having difficulty collecting from its customers, but that a check would be sent to Chiquita immediately. The last time I spoke with Mr. Suh was early February at which time he told me a check was on its way. To date, no payments have been received from Juniper Tree despite the fact that the debt is over six months past due.

14. Defendants' failure, refusal, and admitted inability to pay, the amount of \$29,601.92 to Chiquita, demonstrate that defendants are failing to maintain sufficient assets in the statutory trust and have dissipated and will continue to dissipate trust assets belonging to plaintiff.

15. Unless the assets of the defendant corporation are frozen, it is likely the trust assets will continue to be dissipated. As a result, Chiquita will suffer immediate and

irreparable harm because it will lose the trust assets and rights that are owed under the statute.

16. No provisional remedy has been secured or sought in this action, and no prior application has been made for the same or similar relief as is sought herein.

I do solemnly declare under the penalties of perjury that the foregoing statements are true and correct to the best of my knowledge, information and belief.

CHIQUITA FRESH NORTH AMERICA
LLC

By: Kelly Bates

Subscribed and sworn to before me this 5th day of March, 2008.

Barbara L. Kobasuk
Notary Public

My Commission Expires: September 4, 2012

BARBARA L. KOBASUK
Notary Public, State of Ohio
My Commission Expires 09-04-2012

INVOICE



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(Original)

CHIQUITA FRESH NA (FRUPAC)
 3005 SOLUTIONS CENTER

Chiquita Fresh North America L.L.C.

CHICAGO, IL 60677-3000
 JUNIPER TREE INC.
 DBA BEST PRODUCE
 1240 OAK POINT AVE
 BRONX, NY 10474

JUNIPER TREE INC.
 DBA BEST PRODUCE
 1240 OAK POINT AVE
 BRONX, NY 10474

JUNIPNY

JUNIPNY

PLEASE PRINT

PURCHASE ORG.	SALES TERMS	SHIP DATE	PAYMENT TERMS	DUE DATE	INTERNAL INFORMATION
NA	D	5/26/07	NET 10	6/14/07	

QUANTITY	PRODUCT CODE	PRICE PER	AMOUNT
384	GRAPES WHITE SEED	17.33	6,654.72
1632	GRAPES RED SEEDLE	19.83	32,362.56
1	TEMP RECORDER	23.50	23.50
	HANDLING @ 1.50		3,024.00
2016	Total		
	SALES AMOUNT		39,017.28
	OTHER COST AMOUNT		3,047.50

REMARKS CURRENCY USD TOTAL AMOUNT DUE: 42,064.78

THE UNDERSIGNED HEREBY CERTIFY THAT THE ABOVE IS A TRUE AND CORRECT STATEMENT OF THE QUANTITY AND DESCRIPTION OF THE GOODS SHIPPED AND THAT THE SAME HAVE BEEN DELIVERED TO THE ADDRESSEE OF THIS INVOICE AND THAT THE SAME ARE IN THE POSSESSION OF THE ADDRESSEE.

TERMS OF SALE FOR THIS TRANSACTION ARE STATED ON THE REVERSE SIDE OF THIS INVOICE

CHIQUITA FRESH NA (FRUPAC)
3005 SOLUTIONS CENTER
CHICAGO, IL 60677-3000



JUNIPER TREE INC.
DBA BEST PRODUCE
1240 OAK POINT AVE
BRONX, NY 10474

JUNIPER TREE INC.
DBA BEST PRODUCE
1240 OAK POINT AVE
BRONX, NY 10474

JUNIPNY

JUNIPNY

12853C

D

7/26/07

NET 10

8/09/07

168 PEARS
752 KIWIS

PEARS
KIWI

PRICE PER	QUANTITY
8.50	1,428.00
7.25	5,452.00

920 Total

SALES AMOUNT

6,880.00

OTHER COST AMOUNT

CURRENCY USD

6,880.00

THIS INVOICE IS A COPY OF THE ORIGINAL INVOICE AND IS NOT VALID FOR PAYMENT PURPOSES

INVOICE



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CHIQUITA FRESH NA (FRUPAC)
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Chiquita Fresh North America L.L.C.

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JUNIPNY

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BRONX, NY 10474

JUNIPNY

ALL OF THE ABOVE ARE SUBJECT TO THE TERMS AND CONDITIONS
PRINTED ON THE REVERSE SIDE OF THIS INVOICE

PURCHASE ORD.	SALES TERMS	SHIP DATE	PAYMENT TERMS	DUE DATE	INTERNAL INFORMATION
11565-B	F	7/31/07	NET 10	8/11/07	

QUANT.	PRODUCT CODE	PRICE PER	AMOUNT
210	MELONS HONEY DEW	5.00	1,050.00
560	MELONS CANTALOUPE	5.00	2,800.00
3	AIR BAG	10.00	30.00
1	TEMP RECORDER	23.50	23.50
770	Total		
	SALES AMOUNT		3,850.00
	OTHER COST AMOUNT		53.50

CURRENCY USD	TOTAL AMOUNT DUE: 3,903.50
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THE ABOVE LISTED COMMODITIES ARE SOLD SUBJECT TO THE UNITED STATES CUSTOMS AND BORDER PROTECTION ACT. ALL COMMODITIES ARE THE PROPERTY OF THE UNITED STATES CUSTOMS AND BORDER PROTECTION ACT. ALL COMMODITIES ARE THE PROPERTY OF THE UNITED STATES CUSTOMS AND BORDER PROTECTION ACT. ALL COMMODITIES ARE THE PROPERTY OF THE UNITED STATES CUSTOMS AND BORDER PROTECTION ACT.

TERMS OF SALE FOR THIS TRANSACTION ARE STATED ON THE REVERSE SIDE OF THIS INVOICE

7/07/07

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INVOICE

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JUNIPNY

JUNIPER TREE INC.
DBA BEST PRODUCE
1240 OAK POINT AVE
BRONX, NY 10474

JUNIPNY

LATER

D

7/07/07

NET 10

7/20/07

864 GRAPES RED SEEDED
1 TEMP RECORDER
HANDLING @ 1.50

17.06 14,739.84
23.50 23.50
1,296.00

864 Total

SALES AMOUNT

14,739.84

OTHER COST AMOUNT

1,319.50

CURRENCY USD

TOTAL AMOUNT DUE: 16,059.34

TERMS OF SALE AND TIME OF DELIVERY ARE STATED ON THE FRONT OF ONE OF THIS INVOICE